

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	
)	
v.)	Criminal No. 05-221
)	
HOWARD KELLEY,)	
Defendant.)	

ORDER OF JURY SELECTION PROCEDURE

The available jury pool will be placed in the courtroom. A panel of 32 (28 plus 4 alternates) jurors will eventually be selected. The Judge will come on the bench, introduce the case & tell the jurors why they have been summoned to the courtroom. (Judge's remarks are attached hereto) The Judge will then direct the courtroom deputy to swear the panel. The courtroom deputy will ask the entire group of jurors to stand and raise their right hands and will swear them to the following oath:

"You and each of you do solemnly swear and affirm that any statement you make in this room in the cause now trying shall be the truth, the whole truth, and nothing but the truth, under the pains and penalties of perjury."

Once administered, the Judge will direct the courtroom deputy to seat the jurors in the jury box. The courtroom deputy will then ask the entire group the following questions:

1. "The defendant in this case is Howard Kelley. Do any of you know Mr. Kelley?"
2. "The government is represented by Assistant United States Attorney James H. Love."
3. "The defendant is represented by Attorney Herbert A. Terrell."

4. "Do you know any of these attorneys? Have they ever represented you or any member of your immediate family?"
5. "Have you heard or read anything about this case from any source, including but not limited to the newspapers, radio, television or magazines?"
6. "Are you, or any member of your immediate family employed by the federal government, with the exception of military service? If so, what do they do?"
7. "Are you or any member of your immediate family, or any close friend ever been employed by any law enforcement agency?"
8. "Have any of you ever served as a juror in a criminal or a civil case? If so, was that in federal or state court?"
9. "Have any of you ever served as a member of a grand jury in either the federal or state courts?"
10. "Do you have any health, hearing or vision problems that might affect your ability to serve effectively as a juror?"

After these questions have been posed of the jury panel, each juror will then individually answer the questions posed on the personal data sheet questionnaire (attached hereto). The courtroom deputy will ask any questions of the jurors. All questions posed must have the approval of the judge.

After counsel has reviewed these responses, each will consider their challenges. Of the first 28 jurors of the panel, the Government is granted 6 peremptory challenges and the defendants 10 challenges with the government proceeding first. Each peremptory challenge will be labeled (i.e. "G-1" is government's first, "D-3" is defendant's third). Following the government's first and sixth strikes, the defendant will make one strike. At each of the other strikes by the government, the defendant will make two strikes. The Government and defendant will get one strike on jurors 29 through 32. The jurors not stricken will be the alternates.

After all challenges are made, those stricken jurors will be removed from the jury box and the remaining panel will be the jury selected for this trial. When seating a jury panel, the first twelve names from the panel of 28 seated is the PRIMARY panel. This means that if any of the first twelve jurors are selected for this jury, they are to remain in their seats, with the remaining jurors to fill in the rest of the panel. The jury will then be comprised of the panel of twelve, with two alternates. After the jury has been placed in the jury box, counsel will be asked if they approve of the selection process of the jury and the jury selected.

Prior to the beginning of testimony, the jury will be administered the following oath when the Judge is on the bench:

"You and each of you do solemnly swear and affirm that you will well and truly try the matters in issue now on trial, and render a true verdict, according to the law and the evidence, under the pains and penalties of perjury."

After the entire case has been presented to the jury and they prepare to deliberate on the issues presented, the courtroom deputy is then sworn in as the Bailiff by the Law Clerk present, who administers the following oath:

"You do solemnly swear and affirm to keep this jury together in some private and convenient place, and not to permit any person to speak to or communicate with them, nor to do so yourself unless by order of the court or to ask whether they have agreed on a verdict, and to return them into court when they have so agreed, or when ordered by the Court, under the pains and penalties of perjury."

BY THE COURT:

s/Gary L. Lancaster, J.
Hon. Gary L. Lancaster,
United States District Judge

Dated: July 16, 2007

PERSONAL DATA SHEET

WHEN CALLED, PLEASE ANSWER THE FOLLOWING QUESTIONS:

1. "My juror number is _____."
2. "I live in _____ (city & county only)."
3. "My occupation is _____."
4. "My employer is _____."
5. "My spouse's occupation is _____."
6. "My spouse's employer is _____."
7. "My children are employed as _____."
8. "My educational level is _____."
9. "Have you ever been a party to a law suit?"
10. "Have you ever been involved in a criminal matter in any court that concerned yourself, a member of your family, or a close friend as a defendant, a witness, or a victim? If so, please tell us the circumstances of that experience and the result."
 - a. Were you satisfied with the way the police and courts handled your case?
 - b. In light of your experience, would you be able to rendering a fair and impartial verdict in this case?"
11. "The judge will instruct you that a defendant in a criminal case is presumed innocent of the crime he is charged with, both now and throughout the trial. Do you have any difficulty accepting this instruction, that is presuming at the present time that Mr. Kelley is innocent, despite the fact that he has been accused in an indictment?"

12. "If the defendant testifies in this case, would you be inclined to disbelieve him, simply because he is the defendant?"
13. "The defendant may not testify in this case. If the court would instruct you that you cannot infer that he is probably guilty because he did not testify, could you follow the court's instruction?"
14. "Several of the government's key witnesses will be federal or state law enforcement officers. Would you be inclined to give more weight to the testimony of a witness who is called by, or who works for the government or any law enforcement agency? If yes, if the court were to instruct you that you cannot give more weight to the testimony of a law enforcement officer, simply because he is a law enforcement officer, and that you must evaluate his credibility the same way as any other witness, could you follow that instruction?"
15. "If selected, would you be able to render a verdict solely on the evidence presented and in the context of the law as given by the Court, disregarding any other ideas or beliefs about the law you may have encountered in reaching your verdict?"
16. "Is there any personal reason you have that makes you reluctant to sit as a juror?"